THE HON'BLE SRI JUSTICE V. ESWARAIAH

Date:6-04-2006

WRIT PETITION No. 5524 OF 2006

BETWEEN:
K.Jaganadharao and others

…Petitioners

And

Sherilingampally Municipality, rep.by its Commissioner, Ranga Reddy District and others

…Respondents

ORDER:

The petitioners seek to issue a writ of mandamus declaring the impugned memos issued by the first respondent dated 9-8-2005 as arbitary, capricious, illegal and violative of Section 215 of the Andhra Pradesh Municipalities Act, 1965.

Heard the learned counsel appearing for the petitioners as well as the learned standing counsel appearing for the respondents.

It is the case of the petitioners that they purchased plots in Sy.No.211 of Madeenaguda village, Adityanagar Colony, Rajenderanagar Taluk, Ranga Reddy District within Serilingampally Municipality under registered sale deeds and they formed an association called M/s. Adityanagar Residents Welfare Association, Madeenaguda. It is stated that the petitioners applied for approval of the building plan for construction of residential houses in their respective sites by paying necessary fee, but the respondents refused to grant permission on the ground that A.S.No.829 of 2003 on the file of this Court,

which was filed against the Judgment, dismissing O.S.No.379 of 1996 on the file of the II-Additional Senior Civil Judge, Ranga Reddy is pending.

The learned counsel appearing for the petitioners submits that the respondent-Municipality considered the application of one K.Hari Singh who is similarly situated and granted permission for construction of the building subject to the out come of the result in A.S.No.829 of 2003 and therefore, the action of the respondents in not considering the applications filed by the petitioners seeking permission to construct houses is highly arbitrary and illegal. He further submits that the society to which the petitioners are members have moved vacate stay petition in A.s.No.829 of 2003. On the application of the society, interim injunction granted in favour of the appellant therein came to be vacated. He refers the order passed by this Court in C.M.P.No.10014 of 2003 and C.M.P.No.17077 of 2003, which read as follows:-

> **The petitioner is the 4th defendant in the suit. The unsuccessful plaintiff in the suit is the appellant herein. The suit is filed for partition and separate possession of the suit schedule property. The said suit was dismissed. Aggrieved by the said dismissal, the present appeal is preferred.**
>
> **This Court by an order dated 30-4-2003 in C.M.P.No.10014 of 2003, granted interim injunction as prayed for and hence the present petition is filed by the fourth defendant in the suit seeking vacation of the above said injunction order.**

In view of the fact that there was no injunction against the petitioner herein during the pendency of the suit, we deem it appropriate to vacate the interim order dated 30-4-2003.

Learned counsel for the appellant argued that the vacate stay petitioner is proposing to make certain construction in the land in question and in which case the vacate stay petitioner would come forward with a plea of claiming equities at a later point of time and even if the appellant succeeds in the appeal eventually, he will not be in a position to restore his possession. On the other hand, learned counsel for the vacate stay petitioner made a categorical statement that in the event of the success by the appellant in the appeal, the petitioner herein would not raise any claim of equities. The president of the 4th defendant Welfare Association will file an affidavit incorporating the above said statement within a period of two weeks from today".

It is further submitted by the learned counsel for the petitioners that the association filed affidavit as directed by the Division Bench.

The perusal of the records goes to show that the injunction secured by the appellant in A.S.No.829 of 2003 cannot be vacated on the application of the association to which the petitioners are members. In that view of the matter, the rejection of building permission of the petitioners by the respondent-Municipality on the ground of pendency of the appeal is not justified.

Accordingly, the writ petition is disposed of directing the respondents to consider the applications of the petitioners seeking permission to construct the buildings

dehors the pendency of the appeal in A.S.No.829 of 2003 and pass appropriate orders within six weeks from the date of receipt of copy of this order.

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V.ESWARAIAH, J

Date: 6-4-2006.

Shr.